

☐ UNCLASSIFIED☐ INTERNAL
USE ONLY☐ CONFIDENTIAL☐ SECRET

ROUTING AND RECORD SHEET

DD/A Registry

79-1011

SUBJECT: (Optional)

Foreign Gifts

FROM:

Harry E. Fitzwater
Director of Personnel
5 E 58

EXTENSION

NO.

DATE

Executive Registry

79-790

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1.

Executive Officer, DD/A

3/22

Sir:

2.

Associate DD/A

3/26

3.

Deputy Director for
Administration

3/28

4.

5.

Deputy Director of
Central Intelligence

3/29/79

29/3/79

6.

7.

Director of Central
Intelligence

4/1

8.

9.

Long - file

10.

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15.

With regard to your question concerning the disposition of foreign gifts which have been reported to the General Services Administration, attached is a copy of the Federal Register which describes the procedures governing the utilization, donation and disposal of such gifts. In sum, the procedure is as follows:

- 1) The items are offered to other Federal agencies for display (§101-49.202), or
- 2) Donated to public agencies and non-profit educational and public health organizations for public display (§101-49.301), or
- 3) Sold by competitive bids or negotiated sales. The employee recipient of a gift who indicates an interest in purchasing the item will be given an opportunity to participate in such sales (§101-49.401).

According to the Office of Protocol, Department of State, it may be 6 to 12 months before any notification is given the Agency regarding disposition of the gifts reported to GSA.

Att

Harry E. Fitzwater

FORM
3-62

610

USE PREVIOUS
EDITIONS☐

SECRET

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Administration. You should mail or deliver any payment for services to the Administrative Office, Council on Environmental Quality, 722 Jackson Place NW., Washington, D.C. 20006.

(f) A receipt for fees paid will be given upon request. Refunds of fees paid for services actually rendered will not be made.

(g) The Council may waive all or part of any fee provided for in this section when the Freedom of Information Officer (or designee) deems it to be in either the Council's interest or in the general public's interest.

[FR Doc 77-37142 Filed 12-29-77; 8:45 am]

[6820-24]

Title 41—Public Contracts and Property Management

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

SUBCHAPTER H—UTILIZATION AND DISPOSAL

PART 101-49—UTILIZATION, DONATION, AND DISPOSAL OF FOREIGN GIFTS AND DECORATIONS

AGENCY: General Services Administration

ACTION: Temporary regulation H-18.

SUMMARY: This temporary regulation establishes policies and procedures governing the utilization, donation, and disposal of gifts and decorations from foreign governments. This regulation provides the necessary implementation of those provisions of Pub. L. 95-105 relating to the transfer, donation, and other disposal of foreign gifts and decorations which are under the purview of the Administrator of General Services.

DATES: Effective: January 1, 1978. Extension: December 31, 1978 unless revised or superseded sooner. Agency comments on or before April 30, 1978.

ADDRESSES: Agency comments to: General Services Administration (FAP), Washington, D.C. 20406.

FOR FURTHER INFORMATION CONTACT:

John I. Tait, 202-557-1914, Regulations and Management Control Division.

SUPPLEMENTARY INFORMATION:

APPLICABILITY

The provisions of this temporary regulation apply to all employing agencies defined in 101-49.001-6.

BACKGROUND

Section 515 of Pub. L. 95-105, approved August 17, 1977, 91 Stat. 862, 5 U.S.C. 7342, provides generally for the transfer, donation, and other disposal in accordance with the provisions of the Federal Property and Administrative Services Act of 1949, as amended, of gifts of more than minimal value and decorations given to employees of the U.S. Government by foreign governments. This regulation provides the necessary implementation of those provisions of Pub.

95-105 relating to the transfer, donation, and other disposal of foreign gifts and decorations which are under the purview of the Administrator of General Services.

ASSISTANCE

Agencies may request the assistance of GSA in complying with the provisions of this regulation by contacting the General Services Administration (FW), Washington, D.C. 20406.

AGENCY COMMENTS

Agency comments with regard to the policies and procedures in this temporary regulation may be sent to the General Services Administration (FAP), Washington, D.C. 20406, no later than April 30, 1978, for possible incorporation into the permanent regulation.

AVAILABILITY OF REVISED STANDARD FORM 123

Supplies of revised Standard Form 123, October 1977, Transfer Order Surplus Personal Property, may be obtained by submitting a requisition in FEDSTRIP/MILSTRIP format to the regional office providing support to the requesting activity. Include on the requisition the national stock number 7540-00-965-2416 for Standard Form 123.

EFFECT ON OTHER ISSUANCES

When the provisions of other regulations and related directives are in conflict with the provisions of this temporary regulation, the provisions of the latter shall govern.

Dated: December 18, 1977.

ROBERT T. GRIFFIN,
Acting Administrator
of General Services.

New Part 101-49 of 41 CFR: Subchapter H is added as set forth below.

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101-49.001	Definitions of terms.
101-49.001-1	Employee.
101-49.001-2	Foreign government.
101-49.001-3	Gift.
101-49.001-4	Decoration.
101-49.001-5	Minimal value.
101-49.001-6	Employing agency.

Subpart 101-49.1—General Provisions

101-49.101	Custody of gifts and decorations.
101-49.102	Care and handling.
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101-49.202	Transfers to other Federal agencies.
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101-49.303	Allocation.
101-49.304	Conditions of donation.
101-49.305	Costs incident to donation.
101-49.306	Withdrawal of deposable gifts and decorations for Federal utilization.
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Subpart 101-49.4—Sale or Destruction of Foreign Gifts and Decorations

101-49.400	Scope of subpart.
101-49.401	Sale of gifts and decorations.
101-49.402	Approval of sales by the Secretary of State.
101-49.403	Responsibility for sale.
101-49.404	Proceeds from sales.
101-49.405	Destruction of gifts and decorations.
101-49.406	Sale or destruction of tangible gifts valued at \$100 or less.

AUTHORITY: The provisions of this Part 101-49 are issued under Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c), and Sec. 515, 91 Stat. 862, 5 U.S.C. 7342.

§ 101-49.000 Scope of part.

This part prescribes policies and procedures governing the utilization, donation, and disposal of gifts and decorations from foreign governments in accordance with 5 U.S.C. 7342.

§ 101-49.001 Definitions of terms.

For the purposes of this Part 101-49, the following terms shall have the meanings set forth in this section.

§ 101-49.001-1 Employee.

"Employee" means:

(a) An employee as defined by 5 U.S.C. 2105 and an officer or employee of the United States Postal Service or of the Postal Rate Commission;

(b) An expert or consultant who is under contract under 5 U.S.C. 3109 with the United States or any agency, department, or establishment thereof, including, in the case of an organization performing services under such section, any individual involved in the performance of such services;

(c) An individual employed by, or occupying an office or position in, the government of a territory or possession of the United States or the government of the District of Columbia;

(d) A member of a uniformed service;

(e) The President and the Vice President;

(f) A Member of Congress as defined by 5 U.S.C. 2106 (except the Vice President) and any Delegate to the Congress; and

(g) The spouse of an individual described in (a) through (f), above (unless such individual and his or her spouse are separated) or a dependent (within

the meaning of section 152 of the Internal Revenue Code of 1954) of such individual, other than a spouse or dependent who is an employee under (a) through (i), above.

§ 101-49.001-2 Foreign government.

"Foreign government" means:

(a) Any unit of foreign governmental authority, including any foreign national, State, local, and municipal government;

(b) Any international or multinational organization whose membership is composed of any unit of a foreign government described in (a), above; and

(c) Any agent or representative of any such unit or such organization, while acting as such.

§ 101-49.001-3 Gift.

"Gift" means a tangible or intangible present (other than a decoration) tendered by, or received from, a foreign government.

§ 101-49.001-4 Decoration.

"Decoration" means an order, device, medal, badge, insignia, emblem or award tendered by, or received from, a foreign government.

§ 101-49.001-5 Minimal value.

"Minimal value" means a retail value in the United States at the time of acceptance of \$100 or less, except that:

(a) On January 1, 1981, and at 3-year intervals thereafter, "minimal value" will be redefined in regulations prescribed by the Administrator of General Services, in consultation with the Secretary of State, to reflect changes in the consumer price index for the immediately preceding 3-year period; and

(b) Regulations of an employing agency may define "minimal value" for its employees to be less than the value provided under this section.

§ 101-49.001-6 Employing agency.

"Employing agency" means: (a) The Committee on Standards of Official Conduct of the House of Representatives, for Members and employees of the House of Representatives, except that those responsibilities specified in 5 U.S.C. 7342 (c) (2) (A), (e), and (g) (2) (B) shall be carried out by the Clerk of the House; (b) The Select Committee on Ethics of the Senate, for Senators and employees of the Senate;

(c) The Administrative Office of the United States Courts, for judges and judicial branch employees; and

(d) The department, agency, office, or other entity in which an employee is employed, for other legislative branch employees and for all executive branch employees.

Subpart 101-49.1—General Provisions

§ 101-49.101 Custody of gifts and decorations.

(a) GSA generally will not take physical possession of gifts or decorations governed by this part. Such gifts and decorations shall remain in the custody and be the responsibility of the employing agency.

(b) GSA will direct the disposition of gifts and decorations when reported to GSA by the employing agency by:

- (1) Transfer to Federal agencies;
- (2) Donation for public display or reference purposes;
- (3) Sale with the approval of the Secretary of State; or
- (4) Destruction.

§ 101-49.102 Care and handling.

Each employing agency shall be responsible for and bear the cost of performing care and handling of gifts and decorations pending disposition and removal from their physical custody.

§ 101-49.103 Information on availability for Federal utilization or donation.

GSA will provide information on the availability of gifts and decorations when reported to GSA to Federal agencies and appropriate State agencies for surplus property that request such information.

§ 101-49.104 Cooperation of employing agencies.

Employing agencies shall cooperate fully in the inspection of gifts and decorations in their custody and in providing assistance in pickup and shipment upon receipt of GSA-approved documentation.

§ 101-49.105 Appraisals.

Employing agencies will be required to appraise specific gifts and decorations when requested by GSA.

Subpart 101-49.2—Utilization of Foreign Gifts and Decorations

§ 101-49.200 Scope of subpart.

This subpart 101-49.2 prescribes policies and procedures governing the utilization and transfer within the Federal Government of foreign gifts and decorations.

§ 101-49.201 Reporting.

§ 101-49.201-1 Gifts and decorations required to be reported.

(a) Except as provided in § 101-49.201-2, tangible gifts and decorations which are not retained for official use or returned to the donor shall be reported to GSA within 30 calendar days after deposit of the gift or decoration with the employing agency. Tangible gifts and decorations which have been retained for official use and have not been returned to the donor shall be reported to GSA within 30 calendar days after termination of the official use. Gifts and decorations shall be reported on Standard Form 120, Report of Excess Personal Property (see § 101-43.4901-120), to the General Services Administration (3FW), Washington, D.C. 20407. The Standard Form 120 shall be conspicuously marked "Foreign Gifts and/or Decorations" and include the following information:

- (1) The name and position of the employee recipient;
- (2) A full description of the gift or decoration;
- (3) The identity, if known, of the foreign government and the name and position of the individual who presented the gift or decoration;

(b) The estimated value in the United States of the gift or decoration at the time of acceptance, or the appraised value, if known;

(5) The current location of the gift or decoration;

(6) The name, address, and telephone number of the responsible accounting official in the employing agency; and

(7) An indication whether the employee recipient is interested in participating in the sale of the gift or decoration if it is sold by GSA.

(b) Gifts and decorations received by the President or a member of the President's family will be reported to the General Services Administration (GSA), Washington, D.C. 20408, using Standard Form 120, completed as described in (a) above.

(c) The Central Intelligence Agency may delete the information required by (a) (1) and (3) of this section if the Director of Central Intelligence certifies in writing to the Secretary of State that the publication of such information could adversely affect United States intelligence sources.

§ 101-49.201-2 Gifts and decorations not to be reported.

(a) The following gifts and decorations shall not be reported to GSA:

(1) Tangible gifts valued at \$100 or less. (See § 101-49.205.)

(2) Decorations which are retained by the employee recipient with the approval of the employing agency.

(3) Gifts and decorations retained by the employing agency for official use, except upon termination of the official use.

(4) Gifts and decorations returned to the donor.

(5) Intangible gifts, such as checks, money orders, bonds, shares of stock, and other securities and negotiable instruments. (See § 101-49.206.)

(6) Cash, currency, and monies, except those with possible historic or numismatic value. (See § 101-49.206.)

(b) Gifts and decorations covered by (a) (2), (3), and (4), above, will be handled in accordance with employing agency regulations.

§ 101-49.202 Transfers to other Federal agencies.

(a) Gifts and decorations will be made available for transfer for a period of 60 calendar days following receipt by GSA of the Standard Form 120 to activities specified in § 101-43.315-1. Transfers will be made as deemed appropriate by GSA generally on a first-come-first-served basis.

(b) Transfers will be accomplished by submitting for approval a Standard Form 123, Transfer Order Excess Personal Property (see § 101-43.4901-122), or any other transfer order form approved by GSA, to the General Services Administration (3FW), Washington, DC 20407. The Standard Form 123 or other transfer order form shall be conspicuously marked "Foreign Gifts and/or Decorations" and include all information furnished by the employing agency as specified in § 101-49.201-1(a).

49.203 Costs incident to transfer, transfers of gifts and decorations made without reimbursement, except direct costs incurred by the employing agency in actual packing, preparation for shipment, loading, and transportation may be recovered by the employing agency from the transferee if billed by the employing agency (101-49.317-1).

49.204 Gifts and decorations no longer required by transferee agency, and decorations no longer required by the transferee agency shall be disposed of as provided in § 101-49.201-1.

49.205 Disposal of tangible gifts valued at \$100 or less.

Tangible gifts valued at \$100 or less shall be returned to the employee recipient or disposed of by the employing agency in accordance with § 101-49.406.

49.206 Deposit of intangible gifts and moneys with the Department of the Treasury.

Intangible gifts and cash, currency, and moneys not required to be reported shall be deposited with the Department of the Treasury by the employing agency in accordance with applicable regulations.

Part 101-49.3—Donation of Foreign Gifts and Decorations

49.300 Scope of subpart.

Subpart 101-49.3 prescribes policies and procedures governing the donation of foreign gifts and decorations to agencies and nonprofit educational and public health institutions and organizations for public display purposes (in the case of books or manuscripts, for public display or reference purposes).

49.301 Donation of gifts and decorations.

Gifts and decorations for which no Federal requirement as determined by GSA will be made available at discretion of GSA to appropriate agencies and nonprofit educational and public health institutions and organizations for a period of 21 calendar days during the period of Federal utilization provided in § 101-49.202(a).

Donations of gifts and decorations made for public display purposes, in the case of books or manuscripts, for public display or reference purposes. Donations will be made in accordance with Subpart 101-44.2, except otherwise provided in this Subpart 49.3.

49.302 Requests by public agencies and nonprofit educational and public health institutions and organizations.

Requests of gifts and decorations to agencies and nonprofit educational and public health institutions and organizations will be accomplished by filing for approval a Standard Form Transfer Order Surplus Personal Property (see § 101-44.4901-123), to the General Services Administration (GSA), Washington, D.C. 20407, through the

State agency. The Standard Form 123 shall be prepared and distributed in accordance with the instructions in § 101-44.4901-123-1 and shall be conspicuously marked "Foreign Gifts and/or Decorations."

§ 101-49.303 Allocation.

Allocation of gifts and decorations will be made by GSA on a fair and equitable basis for the maximum public benefit. Eligible donees may be required to support requests for gifts or decorations with written justification. The following will be considered by GSA in effecting allocation and transfer of gifts and decorations among the States:

(a) Requests submitted through a State agency for a specific gift or decoration when the donee requesting the item has an association or relationship to the employee recipient. Such a request may be further supported by a letter from the employee recipient;

(b) Significance of the gift or decoration to the requesting donee;

(c) Requests submitted through a State agency by public museums;

(d) Quantity and value of the gift or decoration;

(e) Prior receipt of similar items; and

(f) Other criteria as deemed appropriate by GSA.

§ 101-49.304 Conditions of donation.

The State agency shall require the donee to agree, in writing, to the following special handling conditions and use limitations imposed by GSA on the donation of gifts or decorations:

(a) The donee, at its expense, shall be responsible for making arrangements for and removing the gift or decoration and for packing, handling, and reasonable insurance and transportation costs associated with the removal.

(b) The gift or decoration shall be used for public display purposes and, in the case of books or manuscripts, for public display or reference purposes at such times and in such manner as other similar items are displayed or used in the donee's exhibition or reference rooms. The gift or decoration shall not be used for the personal benefit of any individual.

(c) The donee shall place the gift or decoration into use for public display or reference purposes within 12 months following receipt and use the gift or decoration in accordance with this section for a period of restriction of 36 months after being placed in use.

(d) The donee shall comply with all additional restrictions covering the handling and use of any gift or decoration imposed by GSA.

(e) To determine whether the donee is complying with the conditions of the donation, the donee shall allow the right of access to the premises at reasonable times for inspection of the gift or decoration by duly authorized representatives of GSA or the State agency.

(f) The use of the gift or decoration shall be conducted in compliance with all the requirements imposed by GSA regulations (Subpart 101-6.2 and § 101.44-118) issued under the provisions of title

VI of the Civil Rights Act of 1964, title VI of the Federal Property and Administrative Services Act of 1949, as amended, and section 504 of the Rehabilitation Act of 1973, as amended.

(g) During the period of restriction, the donee shall make no attempt to pledge, assign, lease, sell, dispose of, or transfer title to the gift or decoration, directly or indirectly, or do or allow anything to be done which would cause the gift or decoration to be seized, taken into execution, attached, stolen, damaged, or destroyed.

(h) In the event the donee no longer desires to use the gift or decoration for public display or reference purposes as provided in this section during the period of restriction prescribed in (c), above, the donee shall notify the General Services Administration (GSA), Washington, D.C. 20407, through the State agency and, upon demand by GSA, title and right to possession of the gift or decoration shall revert to the U.S. Government. In such event, the donee shall comply with transfer or disposition instructions furnished by GSA through the State agency, with costs of transportation, handling, and reasonable insurance during transportation to be paid by the donee or the Government as directed by GSA.

(i) Upon the donee's failure to comply with any of the above conditions, GSA may demand return of the gift or decoration, and upon such demand, title and right to possession of the gift or decoration shall revert to the U.S. Government. In such event, the donee shall return the gift or decoration in accordance with instructions furnished by GSA, with costs of transportation, handling, and reasonable insurance during transportation to be paid by the donee or the Government as directed by GSA.

§ 101-49.305 Costs incident to donation.

Costs incurred incident to donation of gifts and decorations shall be handled in accordance with § 101-44.101.

§ 101-49.306 Withdrawal of donable gifts and decorations for Federal utilization.

Gifts and decorations set aside or approved for donation may be withdrawn for Federal utilization in accordance with § 101-44.101.

§ 101-49.307 Donation of gifts and decorations withdrawn from sale.

Gifts and decorations which are being offered for sale may be withdrawn and approved for donation in accordance with § 101-44.107.

Subpart 101-49.4—Sale or Destruction of Foreign Gifts and Decorations

§ 101-49.400 Scope of subpart.

This Subpart 101-49.4 prescribes policies and procedures governing the disposal by sale or destruction of foreign gifts and decorations which GSA has determined are not needed for Federal utilization or donation.

§ 101-49.401 Sale of gifts and decorations.

Gifts and decorations shall be sold by competitive bid sales or negotiated sales

activity in accordance with Part 101-49.402, except as otherwise provided in this Subpart 101-49.4. The employee recipient of a gift or decoration who indicates an interest in purchasing the item will, to the extent feasible, be given an opportunity to participate in the sale of the item.

§ 101-49.402 Approval of sales by the Secretary of State.

The approval of the Secretary of State or his designee shall be obtained prior to offering any gift or decoration for sale.

§ 101-49.403 Responsibility for sale.

Except as provided in § 101-49.406, GSA will be responsible for the sale of gifts and decorations. Sales will be conducted by or at the direction of the General Services Administration (GSA), Washington, DC 20407. Employing agencies shall cooperate fully with GSA in the sale of gifts and decorations in their custody.

§ 101-49.404 Proceeds from sales.

The gross proceeds from the sale of gifts and decorations shall be deposited in the Treasury as miscellaneous receipts, unless otherwise authorized by law or regulation.

§ 101-49.405 Destruction of gifts and decorations.

Gifts and decorations which are not sold pursuant to this Subpart 101-49.4 may be destroyed and disposed of as scrap or for their material content.

§ 101-49.406 Sale or destruction of tangible gifts valued at \$100 or less.

Employing agencies are hereby delegated authority to sell or destroy tangible gifts valued at \$100 or less in accordance with this Subpart 101-49.4.

Note: The General Services Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

[FR Doc. 77-37081 Filed 12-29-77; 8:45 am]

[4110-37]

Title 42—Public Health

**CHAPTER I—PUBLIC HEALTH SERVICE,
DEPARTMENT OF HEALTH, EDUCATION,
AND WELFARE**

**CENTER FOR DISEASE CONTROL, NA-
TIONAL INSTITUTE FOR OCCUPA-
TIONAL SAFETY AND HEALTH**

**Mining Safety; Respiratory Protective
Devices**

CROSS REFERENCE: For a document on respiratory protective devices for miners, jointly issued by the Mining Enforcement and Safety Administration, Interior Department, and the National Institute for Occupational Safety and Health, Health, Education, and Welfare Department, see FR Doc. 77-37124, which appears under Title 30 in the Rules and Regulations section of this FEDERAL REG-

ISTER. Refer to the table of contents at the beginning of this issue for the correct page number.

[4110-35]

**CHAPTER IV—HEALTH CARE FINANCING
ADMINISTRATION, DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE**

SUBCHAPTER B—MEDICARE PROGRAM

**PART 405—FEDERAL HEALTH INSUR-
ANCE FOR THE AGED AND DISABLED**

**Subpart E—Criteria for Determination of
Reasonable Charges; Reimbursement
for Services of Hospital Interns, Resi-
dents and Supervising Physicians**

**CRITERIA FOR DETERMINATION OF REASON-
ABLE CHARGES UNDER THE END-STAGE
RENAL DISEASE PROGRAM**

AGENCY: Health Care Financing Ad-
ministration (HCFA), HEW.

ACTION: Final regulation.

SUMMARY: This regulation specifies the criteria for determining reasonable charges under the End-Stage Renal Disease (ESRD) program. It applies to services of free-standing (non-provider) renal dialysis facilities and of physicians caring for patients who are on maintenance dialysis, or are receiving self-dialysis training, or receive a kidney transplant.

The regulation retains, with a few modifications, the version of 20 CFR 405.502(e) which appeared in the notice of proposed rulemaking, published in the FEDERAL REGISTER on November 9, 1976 (41 FR 49499). However, section 405.502(e) has been divided into new, separate sections. In the final regulation, section 405.502(e) is a short, general provision on determination of reasonable charges. Section 405.541 (old section 405.502(e)(1)) covers criteria for determination of reasonable charges for non-provider renal dialysis facility services. Section 405.542 (old section 405.502(e)(2)) pertains to criteria for determination of reasonable charges for physicians' services rendered to renal dialysis patients. Section 405.543 (old section 405.502(e)(3)) includes criteria for determination of reasonable charges for physicians' renal transplantation services. And section 405.544 (old section 405.502(e)(4)) states criteria for determination of reasonable charges for durable medical equipment and supplies for home dialysis.

EFFECTIVE DATE: This amendment shall be effective on December 30, 1977. Section 553(d) of the Administrative Procedure Act permits an immediate effective date when good cause exists. This regulation puts in final form, with certain minor changes, criteria on reasonable charge determinations published as an NPRM on November 9, 1976. Under the terms of a recent order of the United States Court of Appeals for the District of Columbia, the Department cannot im-

plement its reimbursement policies under the End Stage Renal Disease (ESRD) program after January 1, 1978. They are set forth in regulation. Consequently, an immediate effective date is required in order to assure continuity of the Department's administration ESRD Program.

**FOR FURTHER INFORMATION
CONTACT:**

Milton N. Cikins, Branch Chief,
Program Policy, Medicare Bureau,
Care Financing Administration,
East High Rise, Baltimore, Md.
telephone 301-594-5400.

SUPPLEMENTARY INFORMATION

This regulation formalizes administrative guidelines which have been in effect since the outset of the End Stage Disease program. The guidelines appeared in intermediary instructions issued by the Medicare Bureau (for Bureau of Health Insurance). On 29, 1973 the Department published interim regulation in the FEDERAL REGISTER (38 FR 17210). The interim regulation consisted of a short, simple rule. The Department continued to apply administrative policy guidelines. The United States District Court for the District of Columbia ruled, in September 1976, that the Department could not force its administrative guidelines cause they had not been subjected to rulemaking requirements of the Administrative Procedure Act, the Department published a notice of proposed rulemaking (NPRM) on November 9, 1976 (41 FR 49499). The NPRM set forth a more extensive version of 20 CFR 405.502(e), in essence, it incorporated the Administrative Policy Guidelines into the regulation.

**PUBLIC COMMENT ON NOTICE OF PROPOSED
RULEMAKING**

Interested parties were given 60 days from the date of publication of the notice of proposed rulemaking in which to submit any data, views or arguments in support of or in opposition to the proposed rule. Nineteen individuals and groups responded to the proposed rule. Many of them commented on more than one issue. Almost all addressed the provisions dealing with reimbursement for non-provider renal dialysis facilities while about half addressed the provisions concerning physician's reimbursement. We have made several changes in the proposed regulations, based on the comments received. We have also made several minor and technical changes which were not mentioned in the comments received. These include a renumbering of the sections of the regulation, the technical changes concern section 405.502(e)(2)(i) (which is now section 405.542(a)), section 405.502(e)(2)(ii) (which is now section 405.542(b)), and section 405.502(e)(2)(iii) (which is now section 405.542(c)), and section 405.502(e)(3) and are summarized below in discussion of reimbursement of physicians' services.

Several comments were submitted dealing with issues which we determined